

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

DAVID ALLEN TRIMM,

Plaintiff,

v.

COMMISSIONER OF SOCIAL
SECURITY,

Defendant.

Case No. 1:22-cv-00663-BAM

ORDER DIRECTING CLERK OF COURT
TO RANDOMLY ASSIGN DISTRICT
JUDGE

FINDINGS AND RECOMMENDATIONS
RECOMMENDING PLAINTIFF'S
APPLICATION FOR LEAVE TO PROCEED
IN FORMA PAUPERIS BE DENIED

(Doc. 2)

FOURTEEN (14) DAY DEADLINE

Plaintiff David Allen Trimm ("Plaintiff"), proceeding with counsel, seeks review of a decision of the Commissioner of Social Security. Plaintiff initiated this action on June 2, 2022. (Doc. 1.) On the same day, Plaintiff filed an application to proceed *in forma pauperis* under 28 U.S.C. § 1915. (Doc. 2.).

According to Plaintiff's application, he does not receive monthly income from employment, but he does receive money from his wife's income of \$2,023.00 monthly and from VA disability benefits for \$2,555.00 monthly. (Doc. 2 at 1.) This amounts to an annual income of \$54,936.00 (\$4,578.00 x 12 months). Plaintiff also owns a home valued at \$220,000.00, for which he owes \$180,000.00. Plaintiff has one dependent. (*Id.* at 2.)

“To satisfy the requirements of 28 U.S.C. § 1915, applicants must demonstrate that because of poverty, they cannot meet court costs and still provide themselves, and any dependents, with the necessities of life.” *Soldani v. Comm’r of Soc. Sec.*, No. 1:19-cv-00040, 2019 WL 2160380, at *1 (E.D. Cal. Jan. 31, 2019). Many courts look to the federal poverty guidelines set by the United States Department of Health and Human Services (“HHS”) as a guidepost in evaluating in forma pauperis applications. *See Martinez v. Kristi Kleaners, Inc.*, 364 F.3d 1305, 1307 n.5 (11th Cir. 2004); *Boulas v. United States Postal Serv.*, No. 1:18-cv-01163-LJO-BAM, 2018 WL 6615075, at *1 (E.D. Cal. Nov. 1, 2018) (applying federal poverty guidelines to in forma pauperis application). For a family or household of three, the 2022 poverty guideline is \$23,030.00. *See U.S. Federal Poverty Guidelines Used to Determine Financial Eligibility for Certain Federal Programs*, available at <https://aspe.hhs.gov/poverty-guidelines> (last visited June 3, 2022).

Having considered Plaintiff’s application, the Court finds that he has not made the showing required by section 1915 that he is unable to pay the required fees for this action. Plaintiff has attested to his spouse’s income as a source of income. The Court may consider Plaintiff’s spouse’s financial resources in determining whether he is entitled to IFP status. *See Escobedo v. Applebees*, 787 F.3d 1226, 1236 (9th Cir. 2015). Further, Plaintiff has attested to monthly VA disability benefits. Considering his spouse’s income and his VA disability benefits, Plaintiff’s household estimated annual income is more than double the federal poverty guidelines. In light of this, there is no indication that Plaintiff is unable to pay the filing fee while also providing for necessities of life. Accordingly, the Clerk of the Court is HEREBY DIRECTED to randomly assign a District Judge to this action.

Furthermore, it is HEREBY RECOMMENDED that:

1. Plaintiff’s application to proceed without prepayment of fees and costs (Doc. 2) be DENIED; and
2. Plaintiff be required to pay the \$402.00 filing fee in full to proceed with this action.

These findings and recommendations are submitted to the United States District Judge

1 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within **fourteen**
2 **(14) days** after being served with these findings and recommendations, Plaintiff may file written
3 objections with the Court. Such a document should be captioned “Objections to Magistrate
4 Judge’s Findings and Recommendations.” Plaintiff is advised that failure to file objections within
5 the specified time may result in the waiver of rights on appeal. *Wilkerson v. Wheeler*, 772 F.3d
6 834, 838-39 (9th Cir. 2014) (citing *Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).

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8 IT IS SO ORDERED.

9 Dated: June 3, 2022

/s/ Barbara A. McAuliffe
10 UNITED STATES MAGISTRATE JUDGE
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